

*It is at all times necessary, and more particularly so during the progress of a revolution and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to*

# First Principles.

THOMAS PAINE

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## NATIONAL SECURITY AND CIVIL LIBERTIES

### Reagan's Covert Action Policy (I)

by Jay Peterzell

**T**he Reagan Administration has made far-reaching changes in U.S. covert action policy, increasing the use of such operations and severely limiting the role in reviewing them of officials outside the intelligence community. The changes reflect an apparent consensus that covert action should be a routine rather than an exceptional instrument in American foreign relations.

While information about current operations is often incomplete, there is a growing body of evidence that projects begun during the Carter years, including the providing of weapons to insurgents in Afghanistan and attempts to depose Libya's Muammar Quaddafi, have been expanded. New operations aimed at overthrowing governments in Cambodia, Cuba, Nicaragua and other countries are being considered or have already begun. The common thread of the Administration's planning is a desire to weaken perceived Soviet allies. But little thought appears to have been given in some cases to the likely outcome of the operations or to whether they serve longer-term U.S. objectives. Secrecy aggravates this appearance by making important questions about the operations hard to ask and impossible to answer.

The Administration has also introduced a new method of influence: the open threat of "destabilization." In statements about Nicaragua and Cuba, for example, U.S. officials have made public threats of secret reprisals if those countries fail to change policies—even internal ones—of which the White House disapproves. As Daniel Ellsberg argues with respect to

nuclear weapons, coercive diplomacy of this sort is a "use" of covert action just as a threat to shoot someone is a use of a gun. But it is a new use, which elevates destabilization from a sanction applied when others will not work into a commonplace tool of U.S. diplomacy. This tactic, which Administration spokesmen sometimes describe as "international terrorism" when other nations use it, deserves some discussion before it is adopted as a method of choice.

#### Expanding the Capability

During his presidential campaign, Ronald Reagan promised to rebuild the nation's intelligence agencies, which his advisers believed had been unnecessarily restricted following several years of scandals in the early 1970s. This promise was written into the Republican party platform, which pledged to "improve U.S. intelligence capabilities for... covert action" as well as for collecting and analyzing information. "We will provide our government with the capability to help influence international events vital to our national security interests," the platform continued, "a capability which only the United States among the major powers has denied itself."

Of course, the United States had not denied itself this capability. In November 1977, President Carter specifically

*This article is the first part of a series on covert action.*

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directed the CIA to maintain a paramilitary capability, and when the Soviet Union invaded Afghanistan two years later the agency was ready immediately to begin shipping weapons to the Afghan resistance. Donald J. Purcell, a former chief of the Covert Action staff, has said that during its first year the Carter Administration continued to ask the CIA to perform covert operations. Other examples of such operations during the Carter years include efforts to counter Cuban and Libyan actions in Africa.

It is apparently true that the resources devoted to covert operations and the number of major actions undertaken during the first three years of Carter's presidency were relatively small. But these developments merely continued long-term trends noted in 1976 by the Church Committee, which found that the use of covert action had declined steadily from its peak in the mid-1960s. The committee found that paramilitary actions in particular had been at "a very low level" for some time—with the exception, it noted, of CIA involvement in the 1975 civil war in Angola.\*

One reason for the Republican claim that the CIA had unilaterally disarmed itself was the perception among hard-liners that covert action is a necessary and proper element of foreign policy which should be returned to its previous role and used routinely to further U.S. goals.

But the hyperbole of the claim had its roots in emotions generated by successive waves of firings in the CIA's covert action branch, the Directorate for Operations (DDO). These reductions—by James Schlesinger in 1973 and by Stansfield Turner in 1977—were considered by many observers to have been justified on grounds that the agency was overmanned due to the winding-down of the Vietnam war and the decrease in covert operations generally. According to this view, many of those who were dismissed were hangers-on from the early days of the CIA whose careers had stalled in mid-level positions and who blocked the rise of younger officers. "I

knew a lot of those guys," one official commented recently, "and they should have been fired."

Career clandestine service officers were not as enthusiastic. According to Theodore Shackley, a former deputy to the director of the DDO, what hurt most was not the reduction in force itself, which could have been accomplished through peer review and attrition; it was the insensitivity with which the second set of firings were handled by Turner, whose "Halloween Massacre" of some 820 employees began with a wave of pink slips sent out on October 31, 1977.\*\* In a book published earlier this year, Shackley wrote that Turner's firings severely hurt morale in the agency. He says some 2,800 intelligence officers like himself retired between 1976 and 1981, taking with them a "priceless national asset" in the form of their collective experience. (The significance of the figure is hard to determine because Shackley does not distinguish between officers who left the agency because they were demoralized and those who left for other reasons.)

In any case, former DDO officers have been an effective lobby. Part of that effectiveness stems from an ability to associate the solution to their problem with a solution to America's own global problem. Leading his reader through a tour of the world's hot spots, for example, Shackley warns that the United States faces a successful Soviet strategy of supporting revolutionary states and insurgencies whose proximity to "key choke points and trade routes is at best suspicious, at worst a terrifying coincidence." But there is a parallel coincidence. While the roots of individual insurgencies may reach back into the history of the country involved, Shackley writes, "the actual threat to our interests is the product of the last few years—the same years during which the United States, as a matter of policy, abandoned the use of covert means to support its friends.... A coincidence? Once again, a prudent man would answer with care." The single solution to both these coincidences, of course, is to

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\*Another exception, not noted by the Church Committee, was the CIA's cynical provision of weapons to the Kurdish autonomy movement in Iraq. In 1972, the Shah of Iran requested U.S. assistance in arming the Kurds as part of his plan to use their movement to pressure Iraq into making border concessions in the Persian Gulf. The CIA and State Department had repeatedly rejected the plan and, perhaps for that reason, Nixon informed the Shah that the aid would be forthcoming without first briefing the 40 Committee, which at that time was responsible for reviewing all covert operations. The CIA's ultimate contribution was small (\$16 million over three years) compared to that of Iran, but the U.S. role was necessary to gain the trust of Kurdish leaders, who feared the Shah would sell them out. He did. The weapons supply from Iran, Israel and the United States continued until March 6, 1975, when Iran and Iraq announced the signing of an agreement in which Iraq conceded territory in the Persian Gulf and the Shaat al-Arab waterway in exchange for Iran's promise to seal its border against "subversion." The agreement ended all outside assistance to the Kurds, and the next day Iraq launched a brutal offensive which crushed their movement and sent hundreds of thousands of refugees

into what amounted to detention camps in Iran.

The Shah's use of covert action to extort territory from his neighbor was a success, but not a stable one. Five years later, after the Shah's departure, Iraq went to war to wrest back control of the Shaat al-Arab. The war is still going on and the United States is alleged to be involved once again, but this time on the opposite side. Israeli Defense Minister Ariel Sharon in a recent speech said that for several months the U.S., acting through Saudi Arabia and Jordan, has been secretly supplying Iraq with artillery and ammunition. The State Department denied the charge.

\*\*Shackley himself was not a victim of the Halloween Massacre but retired voluntarily after being transferred from the second most powerful job in the DDO to the relative peace and quiet of a position as deputy to the director of the National Intelligence Tasking Center. The demotion was apparently a result of his previous unreported contacts with Edwin P. Wilson, a former CIA contract agent who allegedly sold restricted weapons and sensitive technology to Libya, Uganda, South Africa and the Soviet Union.

restore the clandestine service to its former size and importance.

In a television interview last July, Deputy CIA Director Bobby Inman indicated that the rebuilding of the DDO had already begun. Explaining Director William Casey's appointment of New Hampshire businessman Max Hugel to head the clandestine service, Inman said a judgment had been made that the DDO had been "drawn down below a safe level" over the past ten years. "In deciding where the agency needed to grow in the future, specifically in the clandestine service," Inman said, Casey planned to rely increasingly on non-official, corporate cover for CIA officers stationed abroad. Hence the wisdom of hiring a businessman.

The extent of this growth in the DDO may be judged by recent changes at the CIA. As part of a reorganization of the agency's analytic branch, the entire Soviet Division was recently moved from CIA headquarters across the beltway to Vienna, Va. According to a CIA spokesman, the move was necessary because of the growth in the use of technical equipment at headquarters. In the short run, however, it makes a thousand new desks available for covert action officers and support staff.

The Reagan Administration has also reorganized the NSC mechanism for reviewing covert operations, according to congressional sources and former Administration officials. Some nine months before a controversial new executive order on intelligence was signed in December, the Administration quietly suspended a section of the Carter order which required the participation in this review of certain officials outside the intelligence community, including the Attorney General and the Director of the Office of Management and Budget. Under the Reagan plan, as spelled out in interviews and in a recent statement by the President, the role of these outside officials has been eliminated unless they are invited to attend specific meetings. Overall responsibility for the review has apparently been shifted to a newly formed NSC committee, the Senior Interdepartmental Group-Intelligence. Significantly, the new group is chaired by the Director of the CIA, and working staff are to be provided by that agency—an arrangement which gives the CIA primary responsibility for reviewing its own proposals. Since the early 1950s, comparable NSC committees have been chaired by the national security adviser, with staff provided by the NSC as well.

Also indicative of the new approach to covert action is the fact that administrative responsibility for it within the CIA has been separated from responsibility for espionage. In a speech to CIA employees in July, Casey explained that John Stein, Max Hugel's replacement as head of the DDO, had been charged with "strengthening counter-intelligence, covert action and paramilitary capabilities." Casey said that "direction of the clandestine service"—espionage—was to be delegated to Stein's deputy. It was the clearest indication to date that the perennial competition between collectors and operators would be resolved in favor of the latter in Casey's CIA.

## Lowering the Standard

In 1975, the Church Committee conducted a thorough review of the history of U.S. covert operations. Based on that review, the committee seriously considered recommending a total ban on such operations on the grounds that they are which our government is based." Instead, it concluded that the United States should maintain a capability to influence events through covert action but should do so only in "extraordinary circumstances" involving grave threats to national security and when overt means will not suffice. "Nevertheless," the committee concluded, "covert action should be considered as an exception to the normal process of government action abroad, rather than a parallel but invisible system in which covert operations are routine."

At least until its last year, the Carter Administration apparently moved in the direction of adopting this strict standard for covert operations. Former Secretary of State Cyrus Vance, testifying before the Church Committee in 1975, supported the view that "it should be the policy of the United States to engage in covert actions only when they are absolutely essential to the national security." He added that under this test the number of such operations would be small.

To what extent this standard was adhered to by the Carter Administration is hard to determine without knowing what operations it conducted, what threats they were intended to meet, and the degree to which other means of dealing with those threats were considered. But a consensus has clearly emerged now among critics of the Church Committee that this is the wrong standard and that it is necessary and proper for the United States to make covert action a routine element of its foreign policy.

This consensus was expressed in a meeting last December of Roy Godson's Consortium for the Study of Intelligence, which sponsors private discussions of intelligence issues among former intelligence officers, academics and congressional aides. At the time of the December 1980 meeting, which focused on covert action, Godson and some five other participants were serving on Reagan's intelligence transition team. Opinion at the meeting was nearly unanimous that, as former CIA Deputy Director Ray S. Cline put it, "covert action or special activities or political and propaganda covert action are not a last resort. Rather, they should be one of the first resorts to supplement strategic planning and policymaking." A sponsor of the group made the point still more graphically: "covert action" can be the additive in the battery that drives all the diverse working parts of foreign policy."

**H**as this new consensus that covert action should be a routine component of U.S. foreign policy been translated into practice? The remainder of this article will attempt to answer this question. In this issue, the case of Afghanistan is examined. Future issues will discuss Cambodia, Libya, Nicaragua, Cuba, Angola and other

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countries.

### Afghanistan: Arming the Resistance

Two weeks before his death, Egyptian President Anwar Sadat said in an interview with NBC News: "Let me reveal this secret. The first moment that Afghan incident [the 1979 Soviet invasion] took place, the U.S. contacted me here and the transport of armaments to the Afghans started from Cairo on U.S. planes." An Egyptian military source cited in the report said the weapons included Soviet-model anti-tank and anti-aircraft missiles from Egyptian stocks. The report concluded with Sadat's pledge to continue sending arms "until the Afghans get rid of the Soviets out of their country."

Sadat's remarks showed that some secrets retain their ability to shock no matter how many times they have been disclosed. The official Soviet newspaper *Izvestia* called the revelation a rare act of "political striptease." U.S. officials expressed dismay and bewilderment about why Sadat went public, apparently forgetting that he had chided the United States this summer for "passivity" with respect to the Soviet threat in Afghanistan and elsewhere.

Of course, Sadat's concern was misplaced. The Reagan Administration has continued and even expanded this most public of covert operations.

On January 5, 1980, less than two weeks after the Soviet Union invaded Afghanistan and began its brutal attempt to pacify that country, William Beecher of the *Boston Globe* reported a "hush-hush decision... [to] do everything possible to ship weapons to the Moslem insurgents" there. The weapons supply would be coordinated with China and with Egypt, which had agreed to provide anti-aircraft missiles obtained from the Soviets before Sadat expelled them in 1972. In exchange, the U.S. would give Egypt more up-to-date American weapons. Several days after Beecher's report, the Senate Intelligence Committee was briefed on the operation. That same week, Secretary of Defense Brown went to Peking, reportedly with instructions to find out what weapons the Chinese would be willing to contribute.

In the months that followed, additional details of the weapons supply were reported in the *New York Times* and *Washington Post*. The CIA had been assigned to carry out the operation, and was supplying the Afghans with Kalashnikov rifles, anti-tank missiles, and other Soviet weapons from U.S. and Egyptian stocks.

Saudi Arabia was said to be providing financial assistance. Other reports, although they failed to connect developments with the reported U.S. role, also indicated that the operation was being carried out as originally described by Beecher. Egypt began openly training and arming the Afghan insurgents, and was reported to be receiving a new generation of anti-aircraft missiles from the United States. By the summer of 1980, Egyptian and Chinese weapons had been observed in Afghanistan. The *New York Times* reported on

July 10 that, according to U.S. sources, the rebels had acquired anti-aircraft missiles and were destroying as many as fifteen Soviet helicopters a month—out of an earlier reported total of 150.

Carter administration officials were ambivalent about disclosing the operation. Details had been given to Beecher at almost the same time the weapons supply began. Several days later, Birch Bayh, the chairman of the Senate Intelligence Committee, said in a television interview that the Afghans were determined to resist Soviet aggression and that "we did take certain steps to help them." Some Congressional sources believe Bayh had received a go-ahead signal from the Administration. But a few weeks later, when the *Washington Post* obtained a few additional details about the operation, both the President and the Secretary of State asked the paper not to disclose them. The *Post* delayed a few days then ran the story, the accuracy of which was backhandedly confirmed by Senator Barry Goldwater, who said the paper's reporters and editors should be tried for treason because they had published "chapter and verse of what we heard in a top-secret briefing."

In May 1980, Chinese Defense Minister Geng Biao visited Washington, where he and Secretary of Defense Harold Brown urged their two countries to adopt a common strategic response to Soviet actions in Afghanistan. Three days later, a senior U.S. official who declined to be identified announced that the United States was "seeking to help [the Afghans] in every way we can." He added: "Not all the ways that we pursue are ways that I can discuss."

The Reagan Administration has continued its predecessor's practice of dropping hints and retractions about its actions in Afghanistan. During his presidential campaign, Ronald Reagan said he was in favor of supplying the rebels with "those shoulder-launched, heat-seeking missiles." In March of this year, he said he would consider providing weapons if the Afghans asked for them—a condition they had been satisfying loudly and continuously for more than a year. But that same day, Secretary of Defense Caspar Weinberger said he knew of no decision to aid the rebels.

According to an ABC News report later that spring, however, the Reagan Administration had significantly expanded the U.S. arms supply. The cost by that time had reached \$100 million, making it the largest CIA paramilitary operation since the end of the Vietnam war. In a recent interview, one Afghan expatriate with extensive contacts in the refugee community had strong words of praise for the new American commitment. Since Reagan became President, he said, "we are getting the best arms, the most sophisticated arms. Anti-tank, anti-helicopter.... The Western countries realize we can fight, that's why they give us arms." Another indication of the Administration's policy is its decision in June to sell China "defensive" weapons—a term officials defined as including anti-tank and anti-aircraft missiles. Aides to Secretary of State Alexander Haig connected the decision with closer Sino-American cooperation on Afghanistan.

Two months later, Undersecretary of State James Buckley, the State Department's senior official for security assistance affairs, told a news conference in Indonesia that the United States was giving political and economic support to the Afghans and other "genuine freedom fighters." Asked whether the U.S. planned to provide military aid, Buckley said, "I neither rule it in nor rule it out."

**W**ith this history of official hints, winks and nods it is remarkable that U.S. involvement in Afghanistan was still a secret from most of the American public when ABC News exposed the operation in a major story last June—and again when Sadat made his revelations in September. Much of the credit for this belongs to the American press which, with some exceptions, confined reporting on Afghanistan to interviews in Pakistan, India or Washington with rebel spokesmen who dutifully said they were receiving no outside assistance and were fighting the Soviets, as one report put it, with "axes and gasoline bombs made from Coca-Cola bottles." When foreign assistance was mentioned at all, it was often dismissed as inadequate or as not including anti-aircraft missiles, which the rebels need to defend themselves against helicopter gunships.

Because of the reluctance of the American press to treat the U.S. weapons supply as a fact because it has not been officially confirmed, a number of hard questions about U.S. involvement in Afghanistan have received little or no attention. Among them:

- *Did the United States help provoke the Soviet invasion?* The Soviet Union claims its move into Afghanistan was a response to U.S., Chinese and Pakistani interference. There is some evidence that such interference occurred. Of course, covert actions by the U.S. and China by no means justify the Soviet military invasion. But as a practical matter, suspected attempts to train and arm insurgents on the doorstep of a superpower are often considered provocative—as witness the intensity of recent U.S. charges about El Salvador. Disclosing the U.S. role in Afghanistan before the invasion would greatly aid understanding of Soviet motives and intentions in the area. Understanding why the Soviets invaded is important to formulating a rational U.S. response.

In a little-noticed paragraph of the *Washington Post's* report of the American weapons supply, Michael Getler wrote that even before the Soviet invasion the U.S. had given "small amounts of medical supplies and communications equipment to scattered rebel tribes, plus what is described as 'technical advice' to the rebels about where they could acquire arms on their own."\*\*\* The *Post* did not say when the CIA assistance began. *Pravda* charged as early as March 1979 that the U.S. was involved in Afghanistan—an allegation the State Department called "slandorous and baseless." A Department

spokesman suggested it was a smokescreen for increased Soviet interference there.

At about the same time Moscow made this charge Chinese military advisers were spotted in Pakistan, this time by a more credible source. According to the Canadian magazine *MacLean's*, unwitting U.S. drug enforcement officials stumbled into a group of suspicious-looking Chinese in Pakistan. Fearing the Chinese were heroin dealers from Hong Kong ready to buy up the Afghan-Pakistan opium crop, the officials asked the Pakistan government to take action. The Pakistanis replied that the Chinese had nothing to do with drugs and should be left alone. Unofficially, Pakistani officials admitted the Chinese were military personnel from the People's Republic of China who were training Afghan insurgents on Pakistani soil.

Disclosure of the full Sino-American role in pre-invasion Afghanistan would shed considerable light on Soviet intentions in the region. In his recent book *In Afghanistan's Shadow*, Carnegie Endowment Scholar Selig S. Harrison notes that three major explanations have been advanced for the Soviet Union's move into Afghanistan. The argument made by Richard Pipes and others is that the invasion is part of a larger thrust toward the Persian Gulf and therefore a direct threat to Western access to oil. George Kennan and others argue that the Soviet move was a defensive reaction to rising Islamic fundamentalism in Southwest Asia including parts of the Soviet Union itself. Selig Harrison's own interpretation is that the Soviet Union increasingly regarded Hafizullah Amin, the communist leader its forces deposed, as "a potential Tito" who was turning to the West.

If the U.S. and China were successfully agitating and arming fundamentalist tribesmen in Afghanistan before December 1979, that would obviously weigh in favor of Kennan's interpretation. It might indirectly support or be neutral with respect to Harrison's. It would be evidence against Pipes' theory.

Clearer understanding of Soviet intentions is important to a public debate about an appropriate U.S. policy for the region. That debate for the most part has not occurred—or has been limited to the already-decided issue of whether to provide arms to the Afghan resistance.

- *What is U.S. policy toward Afghanistan—to get Soviet troops to leave or to stay?* Unlike overt military assistance, covert military aid is not subject to debate and approval by Congress. There is a strong U.S. consensus in favor of helping the Afghans, and arms assistance would almost certainly be approved by Congress. But public discussion of the U.S. aid package would require the Administration to explain its policy and would permit an independent assessment of whether the policy was designed to force the Soviets to

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\*\*\*To the extent that the Afghans paid for these weapons themselves, Western efforts to heat up their insurgency may have had an unintentional side-effect: increased heroin addiction in Europe and the United States. Eastern Afghanistan is one of the world's most

productive opium growing regions—far outstripping Indochina's "golden triangle"—and tribal groups there involved in opium production reportedly increased their cross-border sales in order to finance the struggle against their central government.

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negotiate a withdrawal from Afghanistan or to tie them down in an inconclusive, prolonged confrontation.

In January 1980, William Beecher reported that the purpose of the planned U.S. covert operation was to make the Soviet occupation of Afghanistan "long, bloody and expensive." As one high-level official told Beecher: "We can help make this Russia's Vietnam."

Chinese Vice Premier Deng Xiaoping expressed a similar intention in an August 1980 interview with Oriana Fallaci. Asked about China's longstanding claim that a third world war is "inevitable," Deng said the Soviet move into Afghanistan was aimed at the Persian Gulf and part of a strategy to "outflank Europe." If the strategy succeeds, Deng warned, the West will have to choose between Munich-like appeasement and world war. He urged the Western powers to make that choice now rather than later. "Choosing now means to place the frontline in Afghanistan and Cambodia," Deng said. "These are the two places where we must try very hard to tie down the Soviet Union for several years: Afghanistan and Cambodia. If we do so, the war is postponed."

One indication that the United States shared Deng's strategy, at least when the Afghanistan operation began, was provided by former national security adviser Zbigniew Brzezinski. In a recent interview, Brzezinski exhorted America and its allies to make "Afghanistan and Kampuchea-type developments too costly to repeat."

The way to implement the Deng/Brzezinski strategy is for the U.S. to pour arms into Afghanistan, call loudly for negotiations, but block a negotiated settlement. American officials insist they have not adopted this strategy of 'fighting to the last Afghan' and that the U.S. objective is simply to persuade the Soviets to leave. "It is not the policy of this Administration to see the Soviet Union sink into a quagmire," one official said in an interview this summer. "We are not trying to humiliate the Soviets on this." Privately, officials say the Administration understands the Soviet Union's interest in Afghanistan because of the proximity of its border and is willing to see a left-leaning but independent government there. But they believe the Karmal government must be replaced because it has been fatally compromised by its association with the Soviet occupation and would collapse immediately if the Soviets withdrew—an assessment shared by almost all observers.

Overt U.S. policy, then, is to provide the Soviets with a relatively graceful way out of Afghanistan and urge them to take it. Since July, the U.S. has made or supported various proposals for negotiations. Their common theme is to trade Soviet withdrawal for international guarantees of noninterference in Afghanistan and other measures which would take Soviet security interests into account. The Soviets have rejected these proposals as "unrealistic," primarily because they do not recognize the legitimacy of the Kabul government. Indeed, Kabul responded with its own proposal for regional talks with Pakistan and Iran in which Soviet withdrawal appeared to be both optional and conditional on the termination

of all internal resistance. Clearly then, the Soviet Union is not ready to face the central dilemma of its Afghanistan policy: that if it stays it cannot pacify the country without a major escalation and that if it leaves the Karmal government will fall. Until it becomes "realistic" on this score, the United States can continue to make generous offers without disclosing its ultimate intentions.

There are strong reasons to make these offers in good faith and to ensure that U.S. weapons supplies to the Afghans are part of a strategy to get Soviet troops out of that country. Adopting a stalemate strategy can only harm the insurgents in the long run. As Selig Harrison wrote in the Winter 1980-81 issue of *Foreign Policy*: "to the resistance fighters who are dying for their cause, not to mention the people of neighboring Pakistan, Iran, and India, the prospect of an aimless and indefinite confrontation in Afghanistan is less attractive than it is to some officials in Washington and Peking." By the same token, there is no reason to think the Soviets will be satisfied forever with an inconclusive confrontation of this sort. If at that point withdrawal is not a more attractive option than escalation, the result will be destructive of U.S. interests in the area.

The Soviets have already made increasingly explicit threats against Pakistan, which is the main conduit for weapons reaching the Afghan resistance. In early September, while Kabul's peace proposal was still on the table, Afghan planes bombed a Pakistani village, and two days later Afghan troops crossed the border and searched a number of civilian homes. The raid appeared to be what one U.S. official called a "very acute balancing of carrot and stick." Similar cross-border operations have been reported since then. The Soviets have also recently stated that if the conflict in Afghanistan continues it may spill over into Pakistan. In particular, they say it may lead them to consider aiding separatist ethnic Baluch groups in southern Pakistan—a move which might lead to the disintegration of a major U.S. regional ally. By leaving the Soviets no options other than endless war or escalation, the Deng/Brzezinski strategy could manufacture evidence of its own premise: that the Soviets are headed toward the Persian Gulf.

The U.S. arms supply is a major element in America's Afghanistan policy and should be brought into the open. If the policy is to force a negotiated withdrawal, then this disclosure would make eventual U.S. assurances of noninterference more credible. If the policy is to support a "long, bloody and expensive" conflict, then arms support could be limited to minimize the risk of escalation.

• *Who receives weapons from the United States and its allies?* Disclosing details of the weapons supply would also make possible an independent assessment of the likely effects of U.S. policy if it succeeded and Soviet troops withdrew from Afghanistan.

According to numerous press accounts and to interviews in the exile community, there is a wide gulf between the tribally-based groups inside Afghanistan who do most of the fighting

and the religious/political groups across the border in Pakistan who claim to represent them. A great deal of Western aid flows through the Pakistan-based groups, which apparently let very little reach combatants in Afghanistan not under their control. "We are facing three misfortunes," one tribal leader told the *New York Times* last year, "the Russians, the Pakistanis and these political parties." Anti-Soviet activities in Afghanistan have reportedly been halted for

weeks at a time while the two main fundamentalist political groups, the Hezbi Islami and the Jamiati Islami, battle each other. The Hezbi Islami in particular has resisted efforts to unify the resistance forces, and it is possible that Soviet withdrawal from Afghanistan would be followed by civil war.

*Continued in the next issue of First Principles (Vol. 7, No. 4.)*

## The Executive Order on Intelligence Activities

[Editor's Note: The following is a reprint of testimony given by John H.F. Shattuck, Jerry J. Berman and Morton H. Halperin before the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary of the House of Representatives. The testimony was given on December 15, 1981.]

The Executive Order on Intelligence Activities (E.O. 12333) signed by President Reagan on December 8, represents a grave threat to civil liberties. Against an overwhelming record of civil liberties abuses by the CIA, the FBI, the NSA and other intelligence agencies, exhaustively documented by responsible committees of both the House and the Senate,<sup>1</sup> President Reagan's order represents an exercise in Orwellian doublespeak. While the Order asserts that its "procedures shall protect constitutional and other legal rights," the procedures in E.O. 12333 authorize a wide-ranging assault on civil liberties. In this respect it is similar to the executive orders which have governed the activities of American intelligence agencies since 1976, when President Ford issued E.O. 11905.

The Reagan order goes beyond the Carter and Ford executive orders and expands the already expansive executive assertion of authority to conduct intelligence activities. Before describing this expansion, however, we would like to summarize the common dangers that all three orders pose to civil liberties:

1. Intrusive surveillance of Americans both at home and abroad, using such techniques as physical surveillance, informants, confidential third party records and pretext interviews is permitted in many circumstances even though they are neither suspected of breaking the law nor of acting on behalf of a foreign power.

2. The Orders permit the infiltration of domestic political organizations in a wide variety of circumstances.

3. The Orders permit the Attorney General to authorize secret searches of homes and other physical searches, including opening first class mail in the United States as well as electronic surveillance and physical searches abroad

without a judicial warrant or a finding of probable cause that the individual is engaged in illegal activity.

4. The Orders are to be implemented by agency regulations which may be kept secret. Moreover, the Order itself may be altered by the President without prior debate or any explanation of the newly asserted powers.

5. The Orders contain no standards for the conduct of surveillance by the FBI (except for the use of Fourth Amendment techniques). These are left to Attorney General guidelines, which are secret.

6. The Orders permit the CIA to operate within the United States and to conduct surveillance of Americans.

But the Reagan Order goes even further. The key changes relate to CIA foreign intelligence investigations at home, CIA physical surveillance of Americans abroad, CIA covert operations at home, opening of mail in the United States, and cooperation with local law enforcement agencies. We discuss them in turn.

### Foreign Intelligence Collection in the United States

Neither the Carter nor the Reagan Order establish any standard limiting the collection of foreign intelligence information abroad or counterintelligence information at home or abroad. Thus, except for limits on the use of specific techniques, both orders permit the CIA to clandestinely gather information from unwitting Americans in the United States as well as abroad in the course of a lawful foreign intelligence investigation, and inside the U.S. in the course of a lawful counterintelligence or counterterrorist investigation. Each order establishes a standard for CIA foreign intelligence investigations. *The standard of the Reagan Order permits an expansion of that surveillance and raises serious concerns.*

The Carter Order permitted the clandestine collection by the CIA of foreign intelligence information in the United States in two circumstances:

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"information concerning corporations or other commercial organizations or activities that constitute foreign intelligence" (2-208(a))

and

"information concerning persons who are reasonably believed to be acting on behalf of a foreign power." (2-208(d))

Thus the CIA was free to clandestinely gather information in the United States from any source if it was information relating to business activity and it could clandestinely collect any foreign intelligence information from any person that it suspected of operating for a foreign power.

The Reagan Order uses a different scheme. It poses no limits on targets. Rather it permits collection of any "significant" information and provides that

"no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons." (2.3(b))

The primary focus of this change appears to be the ability of the CIA to use informants and pretext interviews to gather foreign intelligence information from Americans who do not wish to share information with the CIA.

Consider a typical case. A prominent American travels to Iran shortly after the revolution. Upon his return he refuses an invitation to meet with the CIA. However, he is discussing his trip with journalists and at university meetings. The CIA sends a professor to a private meeting to take notes and report back or sends a person pretending to be a reporter to interview the traveler.

The Carter Order prohibited such activity; the Reagan Order permits it. Consistent with civil liberties principles the CIA should not be permitted to surreptitiously gather information from innocent Americans who choose not to provide it to the Agency.

### **Covert Operations in the United States**

The Carter Order did not permit CIA covert operations inside the U.S. The Reagan Order permits such operations. It prohibits such operations at home and abroad only insofar as they are "intended to influence United States political processes, public opinion, policies, or media" (3.4(h)). While this restriction is not in the Carter Order, the ACLU strongly opposes permitting the CIA to conduct covert operations in the United States, since intended or not, they could adversely impact on U.S. political processes and the media.

### **Physical Surveillance Abroad**

While imposing no limits on the use of such techniques as

informants and undisclosed participants in American organizations operating abroad, the Carter Order imposed sharp limitations on physical surveillance of Americans abroad. Such surveillance was permitted only against: (1) "a person reasonably believed to be acting on behalf of a foreign power" or (2) a former employee in a "sources and methods" investigation.

The Reagan Order substantially broadens this authority by permitting unrestricted physical surveillance by the CIA abroad of any person as part of any counterintelligence or sources and methods investigation. It also permits physical surveillance of Americans abroad to collect foreign intelligence when it is "to obtain significant information that cannot reasonably be acquired by other means." (2.4(d)).

There are other minor and more technical changes in the Reagan Order whose significance we have not yet been able to fully assess.

### **Mail Opening**

The Carter Executive Order permitted the opening of mail in United States postal channels only "in accordance with applicable statutes and regulations" (2-205). These require a warrant based upon probable cause of criminal activity. This requirement is not in the Reagan Order, thus it permits the Attorney General to authorize mail opening without a warrant based on his finding that there is probable cause to believe that the target is an agent of a foreign power.

### **Assistance to Local Law Enforcement Agencies**

Except for certain enumerated purposes (repeated in the Reagan Order) the Carter Order prohibited assistance to local law enforcement agencies "except as expressly authorized by law" (2-308). The Reagan Order substantially expunged this authority by permitting assistance unless "precluded by applicable law" (2.6(d)).

Additional expansions of authority contained in earlier drafts of the Reagan Order were deleted from the final draft. These include (1) a claim of inherent power to conduct secret searches and electronic surveillance without probable cause to believe that the target is an agent of a foreign power and (2) increased authority for the CIA at home to "influence" political organizations by infiltrating them and to search for foreign intelligence information.

The events leading up to the issuance of Executive Order 12333 suggests the urgent need for the following congressional action:

- Congress and the public must closely monitor the drafting of implementing procedures. Drafts should be made public to permit public debate and congressional hearings. The very expansive authority granted to the intelligence agencies in the Carter Order were very substantially circumscribed by the implementing procedures, most of which were made public. Thus the question of how significant are the changes by the Reagan



Order will depend very much on whether the new implementing procedures are more expansive. There is, therefore, an urgent need to insure that Congress and the public have an opportunity to review these procedures before they are put into effect.

- Congress should insist that any revisions in the Executive Order be made public prior to implementation. (One way to do this would be to include in any intelligence authorization bill a provision prohibiting surveillance of Americans except according to the guidelines of E.O. 12333).

- Congress should legislate certain basic principles restricting the surveillance of Americans, perhaps by including them in the authorization legislation.

What follows is an explanation of the basic problems raised by all the Executive Orders.

### **Surveillance of Americans**

The fundamental question which any Executive Order should address is under what circumstances can U.S. intelligence agencies seek to gather information from Americans without their permission.

The ACLU's answer is straightforward: Americans at home and abroad should be free from surveillance by intelligence agencies unless they are suspected of engaging in illegal activities for or on behalf of a foreign power. The government does not have the right to spy on its own citizens to surreptitiously learn about their political, commercial, or private activities or to gain possession of information about foreign activities which they prefer to withhold from the government. Moreover, granting the intelligence agencies such authority is an invitation to repeat the abuses of the past, when a search for "foreign connections" was often used as a cover for investigating lawful domestic political activity.

The Executive Order gives a very different answer to this question. It permits the surveillance of Americans under a wide variety of circumstances when they are neither suspected of breaking the law nor of acting on behalf of a foreign power. The authorizations for surveillance by the CIA and the FBI both at home and abroad cover most of the rationales which justified abuses in the past. They include:

- information constituting foreign intelligence or counterintelligence. (These two terms are very broadly defined so as to cover all information relating to foreign powers as well as to their intelligence activities.)
- information obtained in the course of a lawful foreign intelligence or counterintelligence investigation. (This need not be foreign intelligence or counterintelligence information but may be information, for example, about political activity.)
- information needed to protect intelligence sources and methods.
- information concerning political sources or contacts.

These are precisely the rationales used for such programs as

the CIA's Operations CHAOS and the FBI surveillance of the anti-war and new left movements.

### **Fourth Amendment Techniques**

The Executive Orders proceed on the assumption that there is an "agent of a foreign power" exception to the Fourth Amendment which permits the Attorney General to authorize searches which would otherwise require a warrant based on probable cause of criminal activity.

There is no blanket "agent of a foreign power" exception to the Fourth Amendment. All such searches require a warrant based on a finding of probable cause, as Congress has already determined by enacting the Foreign Intelligence Surveillance Act (FISA). In the case of searches of premises, the statute authorizing such searches must include knock and notice provisions.

The Executive Order permits intrusive searches including those of homes and offices to be conducted under the authority of the Attorney General without the approval of a neutral magistrate. It permits the Attorney General to authorize physical searches in the U.S. and physical searches and electronic surveillance abroad upon a finding that there is probable cause to believe that the individual is an "agent of a foreign power." That phrase is not defined in the order. The conduct need not be illegal or even secret.

### **Infiltration of Political Organizations**

The Order permits the infiltration of a lawful political organization for the purpose of gathering information even if it is information about lawful political activity which the organization seeks to keep secret. Moreover, it permits the FBI to infiltrate a political organization for the purpose of influencing the activity of the organization in any lawful investigation.

The right of political association is a bedrock principle established by the First Amendment and the government may not infiltrate a lawful political organization without determining the very foundation of our Bill of Rights.

### **Secret Procedures and Deliberations**

It is outrageous that important civil liberties protections can be signed away with a stroke of the President's pen without any public debate. Only because early drafts of E.O. 12333 were leaked to the press did the President and the Congress learn of the very strong opposition in the country to efforts to permit the CIA to resume domestic surveillance. Some mechanism must be found to insure that any changes in the Order considered in the future will be the subject of full public debate based on official disclosure.

*(continued on page 10)*

## The Executive Order, *continued from page 9*

### FBI Guidelines

Except for Fourth Amendment techniques, the orders do not limit FBI investigations or techniques. These are left to Attorney General guidelines, critical portions of which are kept secret.<sup>2</sup>

We believe that investigative standards for the FBI should be contained in the Executive Order and that, at the very least, they should be made public.

### CIA Surveillance in the United States

While there are some differences, the orders all permit the CIA to operate in the United States to gather information in secret from unwitting Americans. For example, such information may be gathered by the CIA at home in the

course of a lawful counterintelligence investigation.

In enacting the National Security Act of 1947, it is clear that Congress in setting up the CIA intended to prohibit it from spying on Americans at home. The executive orders have been drafted in total disregard of the prohibition.

### FOOTNOTES

1. See the Final Reports of the Church and Pike Committees and the Rockefeller Commission Report.

2. While the Justice Department has publicly asserted that it now applies the "agent of a foreign power" definition contained in FISA, there is no such requirement in the Executive Order nor is it included in public portions of the implementing procedures.

## In The News

### SOURCE KEY

NYT: The New York Times  
WSJ: The Wall Street Journal  
WP: The Washington Post

**CIA/FORMER AGENTS.** According to an investigation by Jeff Gerth of the *New York Times*, a number of former CIA chiefs of station and other officials have gone into private business in countries to which they were assigned by the agency, benefitting from contact developed during their government service and the belief of some foreign officials that they still represent the CIA. CIA attorneys are considering adding a clause to the agency's employment contract which would prohibit such practices. (NYT, 12/6/81)

**CIA/WILSON-TERPIL.** A number of new reports about the activities of Edwin P. Wilson and Frank E. Terpil raise the possibility that the former CIA contract agents were still working for the agency while arranging illegal arms sales and technology transfers to Libya, the Soviet Union, South Africa and other countries. Douglas M. Schlacter, an employee who allegedly supervised the pair's operations in Libya, told ABC News that he thought he had been working for the CIA in Libya and that he had regularly reported to CIA officials including Thomas G. Clines.

According to another report, a potential

recruit for Wilson's operation in Libya was instructed to write to a post office box which turned out to have been rented by the CIA's Office of Personnel.

Finally, former Wilson associate Eugene Tafoya, on trial for the attempted murder of a Libyan student in Colorado, claimed that he had been delivering a message for the CIA when he shot the student. A local police detective testified that he had discussed with a CIA lawyer what position the agency would take in court if Tafoya's claim were true. The detective said "[The lawyer] stated, 'We would have to deny any involvement.'" The attorney, testifying the next day, said the detective had misinterpreted his remarks but added that the agency would not disclose classified information in the court proceedings. George Marling, records chief of the CIA's covert action branch, also testified that the agency would deny knowledge of classified matters even under oath. The issue did not arise with respect to Tafoya, who Marling testified had never worked for the CIA. But when asked whether Wilson was still operating under "deep cover" for the agency, Marling reportedly said he was "not qualified to discuss specific operations."

Tafoya was convicted on December 4 of two misdemeanor charges but acquitted of attempted murder.

In another development, Terpil and George Gregory Korkala were indicted in New York for conspiring in 1979 to deliver guns, decoding equipment and torture devices to the government of Idi Amin in Uganda. (NYT, 10/28/81; WP, 11/20/81; WP, 11/30/81; WP, 12/1/81; WP, 12/2/81)

**EXECUTIVE ORDER ON INTELLIGENCE.** President Reagan signed a new executive order on U.S. intelligence activities. The order omitted a number of controversial measures, included in earlier drafts, which had provoked strong protests from the House and Senate intelligence committees. But the new order contains a number of changes in the authority of the intelligence agencies which affect the rights of Americans.

More detailed interpretations of the order will be contained in secret implementing guidelines. The administration has said it will discuss the guidelines with the House and Senate intelligence committees.

A number of figures criticized the new order as overly permissive, including former CIA Director Stansfield Turner, who said it was likely to result in unwarranted "intrusion into the lives of Americans." Turner said that, unlike FBI agents, CIA officers are "not trained to operate within the constraints of American law" and that it is unfair to put them in a position where they are likely to make "a mistake." He also criticized the deletion of a requirement in the Carter order that the Director of the CIA clear sensitive collection operations with the NSC. He said the requirement made it easier for the Director to demand to be kept informed of the activities of subordinate units. (NYT, 10/28/81; NYT, 11/14/81; NYT, 12/5/81 (text of order); WP, 12/9/81)

**FBI/BRINK'S ROBBERY.** Kenneth Walton, director of a joint Federal-New York City Terrorism Task Force, said in October that investigators were looking into possible connections between Weather Underground

members involved in an attempted robbery of a Brink's truck which resulted in the deaths of three persons and members of other radical organizations, including the Black Liberation Army, Black Panther Party, F.A.L.N., and the May 19 Movement. Walton said "we are looking at this as a major racketeering investigation," apparently because laws concerning organized crime permit broad investigations of ongoing criminal conspiracies. Walton also said possible foreign ties would be examined but declined to say whether the CIA had become involved in the investigation.

Republic of New Africa member Cynthia Boston, who was arrested in connection with the robbery but released when the FBI substantiated her alibi, was later jailed for con-

tempt of court because she refused to cooperate with a Federal grand jury investigating the matter. (NYT, 10/25/81; NYT, 12/8/81)

**FBI/FILES.** An inventory of FBI files by the National Archives recommended that 20-25% of the files be preserved and eventually made public. Most agencies are required to keep only about 5% of their records. The inventory of some 25 million FBI investigations was ordered after 47 groups and individuals sued the FBI and the Archives to prevent the destruction of alleged evidence of illegal FBI activities. (NYT, 11/15/81)

**FIRST AMENDMENT/CHINESE STUDENTS.** The State Department has sent

letters to a number of American universities at which Chinese scholars are studying asking the universities to restrict the students' access to technical information which the Department says is subject to export control legislation. The Department has the right to scrutinize students from communist countries closely before granting visas to do research in sensitive areas, but the regulation has been partially waived as a show of Sino-American friendship. Some schools have refused to cooperate with the Department's request on grounds that, as one university president wrote, "neither our faculty nor our administrators were hired to implement government security actions." (NYT, 11/27/81)

—Jay Peterzell



## In The Courts

### FOIA

*Agee v. CIA*, Civ. No. 79-2788 (D.D.C., October 30, 1981). U.S. District Judge Gerhard A. Gesell refused to reconsider his previous order of July 17, 1981 denying release of most of the CIA records requested by former CIA employee Agee. Agee argued that the court should reconsider its order because disclosed portions of some Department of Justice documents indicate that the CIA may have acted illegally and violated Agee's civil rights during its counterintelligence investigation of his activities abroad. Although the court acknowledged that "the documents describe aspects of the CIA's efforts which raise unanswered and in some respects serious questions as to the legality of the CIA's conduct," it held that the documents were properly classified without indication that they were classified for the purpose of concealing illegal conduct. "The Court's inquiry under FOIA is at an end and the documents are protected from public disclosure."

*Crooker v. Bureau of Alcohol, Tobacco & Firearms*, No. 80-1278 (D.C. Cir., Dec. 8, 1981) (*en banc*). The full U.S. Court of Appeals for the District of Columbia Circuit reversed the earlier panel decision of the court and ruled that the withheld portion of a

Bureau of Alcohol, Tobacco and Firearms training manual for agents—setting forth law enforcement investigatory techniques—falls within the protection of exemption 2 (records relating solely to the internal personnel rules and practices of an agency). The court held that the material was exempt from disclosure because it was predominantly internal and its disclosure significantly risked circumvention of federal statutes and regulations.

*Doyle v. Dept. of Justice*, No. 80-2121 (D.C. Cir., Nov. 6, 1981). The Court of Appeals for the District of Columbia Circuit held that a fugitive who is evading the authority of the federal courts after failing to appear for service of his sentence cannot demand that a federal court entertain his FOIA complaint.

*Taylor v. Dept. of Army*, Civ. No. 80-2353 (D.D.C., Nov. 20, 1981). U.S. district court Judge Harold H. Greene ordered the Department of the Army to release data it had asserted was classified to a reporter of the *Daily Oklahoman*. The reporter had requested the numerical ratings of four measured resource areas (personnel, equipment readiness, training and equipment on hand) for over 160 Army units for the reporting period ending on June 30, 1980. The Army's own regulations at the time the complaint was filed stated that the ratings were unclassified; the court pointed out that "the weight of the Army's claim that the withholding of the area ratings is essential to the national security is severely undermined by the fact that measured resource area ratings have remained unclassified almost twenty years." The judge also found "some indication that the Army's inter-

est in withholding the information was based on internal political reasons rather than on national security."

*Weberman v. FBI*, No. 80 Civ. 2903-CLB (S.D.N.Y., Nov. 16, 1981). A federal district judge in New York ruled that the FBI is entitled to prevail "under the existing law" in deleting information from documents relating to the assassination of President Kennedy, although the judge stated that he "believes most strongly that these requests should be granted." The government successfully argued that much of the information is exempt from disclosure because it involves the foreign relations or foreign activities of the United States.

*Weinberger v. Catholic Action of Hawaii/Peace Education Project*, No. 80-1377, 50 U.S.L.W. 4027 (U.S., Dec. 1, 1981). The Supreme Court by a unanimous vote reversed the ruling of the Ninth Circuit Court of Appeals that the Navy prepare and release a "hypothetical" environmental impact statement (EIS) about the possible effects of storing nuclear weapons in a nuclear capable facility, even if the government could not confirm or deny the actual storage of the weapons because of national security reasons. The Supreme Court held that since the Navy would not be required by the Freedom of Information Act to release an EIS were one prepared—since "virtually all information relating to the storage of nuclear weapons is classified"—it is not required to prepare a "hypothetical" EIS. "Since the public disclosure requirements of NEPA (National Envi-

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## In The Courts

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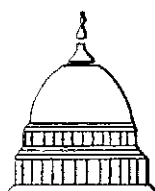
ronmental Policy Act) are governed by FOIA, it is clear that Congress intended that the public's interest in ensuring that federal agencies comply with NEPA must give way to the

Government's need to preserve military secrets."

*Weisberg v. Dept. of Justice*, Civ. No. 75-1996 (D.D.C., Dec. 1, 1981). A federal court upheld the government's claims of exemption 1 (national security), 7(C) (invasion of pri-

vacy), and 7(D) (identification of a confidential source) regarding deletions in over 50,000 pages of documents relating to the assassination of Dr. Martin Luther King. The judge deferred ruling on documents which had been withheld in their entirety until she examines some of them *in camera*.

—Susan W. Shaffer



## In The Congress

### Freedom of Information Act.

On December 14, the Senate Judiciary Subcommittee on the Constitution marked up legislation to amend the Freedom of Information Act and reported it to the full Committee for consideration sometime after the Senate returns in late January.

An amendment in the nature of a substitute, incorporating slightly modified versions of virtually all of the substantive exemption amendments proposed by the Reagan Administration in S. 1751, was introduced as the Chairman's markup vehicle at the outset of the proceeding. This was done after subcommittee chairman Orrin Hatch had stated that his bill as introduced (S. 1730) would be the vehicle for markup. Markup of the Hatch substitute then proceeded over the objections of Sen. Leahy and Sen. Grassley (who was not present), after Hatch rejected their expressed concern that late circulation of the substitute had precluded their careful consideration of its contents.

Sen. Leahy appeared ready to speak at length against the provisions of the Hatch substitute and the circumstances surrounding the Chairman's evident eagerness to achieve a quick markup. Leahy pointed out to Hatch and Sen. DeConcini, the only other subcommittee members present, that they were still awaiting responses to questions put to FBI Director William Webster at a lengthy executive session held by the subcommittee on December 9. As they discussed what transpired at that hearing, it was evident that Webster had been far more impressive in his presentation than his CIA counterpart, William Casey. All three senators publicly noted their concern about Casey's evasiveness and self-contradiction in responding to questions in the executive session about the CIA's FOIA problems.

After a brief conference outside the hearing

room with Hatch and DeConcini, however, Leahy consented to going forward with the markup. By 2-1 votes, with Leahy in dissent, seven amendments offered by DeConcini and one amendment offered by Hatch were adopted in the Hatch substitute. By the same margin, several amendments offered by Sen. Leahy were rejected.

Among other things, the DeConcini amendments changed the proposed fee waiver language in the Hatch substitute from a discretionary to a mandatory standard; added the "mosaic" concept as a factor for agencies to consider in determining what material is "reasonably segregable" in cases involving law enforcement or national security exemptions; and, authorized agencies to require by regulation that each FOIA request contain a declaration stating on whose behalf the request is being made. The single Hatch amendment, addressing the incorporated Administration proposal for a "legal settlement" exemption, changed the focus of the proposed exemption from records "generated by counsel for the United States" to records "given to the United States by any party."

The Hatch substitute, as amended, was then reported to the full Judiciary committee by a 3-2 vote, with Hatch, DeConcini and Thurmond (by proxy) in favor, and Leahy and Grassley (by later vote) opposed.

### Intelligence Identities Protection Act

S. 391, the Senate version of legislation to criminalize the disclosure of information identifying covert agents of the United States, bounced on and off the Senate calendar for several weeks, as pressing end-of-the-session budgetary matters and the threat of extended debate continually convinced Senate leaders to put off consideration of this controversial measure.

On December 16, just hours before the Senate adjourned the first session of the 97th Congress, an effort to bring the bill to a vote on the floor foundered when Sen. Bill Bradley began a lengthy discussion which included reading newspaper editorials explaining why the "intent" standard of the bill as reported by the Senate Judiciary Committee should not be amended to restore the "reason to believe"

standard with which S. 391 was originally introduced. An exchange between Bradley and the bill's exasperated sponsor, Sen. John Chafee, was followed by other remarks, including Sen. Slade Gorton's interjection of a modification of the intent standard. The Senate leadership, unwilling to proceed with what threatened to develop into a protracted debate on the bill, moved on to other business without setting a date certain for further consideration of S. 391 in the new session but with a promise of early consideration.

### Clark Amendment (Foreign Aid Legislation)

Despite the coincidental Washington visit of Angolan faction leader Jonas Savimbi and the earlier Senate endorsement of a complete repeal, Congress left intact the Clark Amendment's prohibition against aid to warring Angolan factions when it passed a two-year foreign aid authorization bill (S. 1196).

Following House passage of H.R. 3556 on December 9, the House and Senate conferees were left to decide whether to accept the House version of the legislation, which was silent on the issue of the Clark Amendment, or the Senate version, which had repealed the Clark Amendment with the stipulation that such action not be construed as an endorsement of aid for military or paramilitary operations in Angola. The conferees adopted the House position, and the conference report (H. Rpt. 97-413) was adopted by a 55-42 vote in the Senate on December 15 and by the House by voice vote on December 16.

—Allan Adler



## In The Literature

### ACCESS TO INFORMATION.

Miller, Judith. "Putting It All Together, Critics Spell 'Big Brother'," *New York Times*, Nov. 15, 1981, p. 2E. The Reagan administration's

assault on the public availability of government information has included its support for proposals to amend FOIA, to use lie detectors for examining federal officials with access to highly classified information, to provide immunity from personal liability for government officials, and to make it easier to classify government information as secret.

U.S. House of Representatives, Committee on Government Operations. *The Government's Classification of Private Ideas*. Hearings before the Government Information Subcommittee, Feb., Mar. and Aug. 1980. 342 pp. Concerns the government's ability to classify, restrict, or assert ownership rights over privately generated data.

### AGENTS IDENTITIES.

McCouch, Grayson M-P. "Naming Names: Unauthorized Disclosure of Intelligence Agents' Identities," 33 *Stanford Law Review* 693 (1981). This analysis includes a review of the existing classification system, and addresses the constitutional limits on congressional authority to curtail disclosures of agents names.

Karp, Walter. "New Cloaks for the CIA." *Village Voice*. Nov. 11-17, 1981, p. 13. Outlines the history of efforts to enact the names of agents legislation, and claims that the only real danger to "national security" is public scrutiny of the CIA's activities abroad.

Snepp, Frank. "The Noose Media Bill." *New York Times*. Dec. 6, 1981, p. E23. Prosecution under the precedent set in last year's *Snepp* decision requires that a source be a governmental official or ex-official; prosecution under the pending names of agents legislation allows prosecution even when the source is entirely public.

U.S. Senate, Committee on the Judiciary. *Intelligence Identities Protection Act—S. 391*. Hearing before the Subcommittee on Security and Terrorism, May 8, 1981. Serial No. J-97-28. 106 pp. Includes testimony from DCI Casey, Richard K. Willard of the Justice Dept., John Maury of the Assoc. of Former Intelligence Officers, and Morton Halperin for the ACLU.

Willard, Richard K. "Enough Delay on the Spy Bill." *Washington Post*. Nov. 17, 1981, p. A19. Urges passage of the names of agents bill, preferably the version containing the "reason to know" standard.

### CIA.

"Administration Considers Easing Curbs on CIA Activities," *Editorials On File*. Oct. 1-15, 1981, pp. 1122-27. Compilation of newspaper editorials reacting to the draft of the intelligence executive order allowing increased CIA domestic authority.

Landau, Saul and John Dinges. "The Chilean Connection." *Nation*. Nov. 23, 1981, pp 566-8. There is evidence that the head of the Chilean secret police met with CIA officials in Washington in 1976, and also negotiated with ex-CIA agents Edwin Wilson and Frank Terpil to buy illegal weapons and electronic spying equipment.

Waas, Murray. "Dinner With Idi, And Other Tales." *Nation*. Nov. 28, 1981, pp. 568-71. Transcripts of conversations between ex-CIA agent and now arms dealer Frank Terpil and undercover NYC police reveal that Terpil had a \$3.2 million contract to supply weapons and communications equipment to the Ugandan government of Idi Amin, and that he helped to carry out murders at Amin's behest.

U.S. Senate, Select Committee on Intelligence. *Report to the Senate*. Covering the Period Jan. 1, 1979-Dec. 31, 1980. Sept. 1981. 37 pp. Discusses FOIA, charters, agents identities, counterintelligence and counterterrorism, covert action and other oversight concerns of the Committee.

### COVERT OPERATIONS.

Feinstein, Nancy and Christopher Simpson. "The Spies Who Are Out In the Cold." *Inquiry Magazine*. Nov. 23, 1981, pp. 11-13. Agents who formerly worked in a clandestine and now-defunct military intelligence operation, Task Force 157, threaten to reveal the operation to the press if they are refused the civil service benefits they claim.

Godson, Roy, ed. *Intelligence Requirements for the 1980's: Covert Action*. Wash., DC: National Strategy Information Center, 1981. 243 pp., \$7.50. Fourth in a series; contains papers presented at a 1980 pro-covert action colloquium attended by academics, former and current intelligence agents, and congressional specialists in intelligence.

### CRIMINAL CODE.

Blum, Bill. "S. 1 Rides Again." *The Progressive*. Dec. 1981, pp. 39-41. Outlines the more

repressive provisions of the current version of the criminal code reform bill.

### FBI.

"The Tufts Papers." *The Tufts (University) Observer*, Oct. 30, 1981. A special report on documents obtained under FOIA from the FBI and the CIA, indicating that the FBI investigated a 1976 allegation that the Fletcher School of Law and Diplomacy was being used as a spy base by the government of Thailand, and that the CIA violated its charter by compiling information on SDS.

U.S. House of Representatives, Committee on the Judiciary. *FBI Undercover Guidelines*. Oversight hearings before the Civil and Constitutional Rights Subcommittee, Feb. 1981. Serial No. 18. 183 pp. Examines the guidelines issued in Dec. 1980 with respect to constitutional problems, social utility and public policy.

### FOREIGN INTELLIGENCE AGENCIES.

Alpern, David M. "The KGB's Spies in America." *Newsweek*. Nov. 23, 1981, pp. 50-61. A great army of Soviet agents are at work in the U.S. collecting classified and unclassified intelligence, their job made somewhat easier by the openness of U.S. society.

### FREEDOM OF INFORMATION.

DeWitt, Hugh E. and Gerald E. March. "Secrecy and the Comprehensive Test Ban." *Bulletin of the Atomic Scientists*. Nov. 1981, p. 53-4. The refusal of the Dept. of Energy to release under FOIA a declassified document is laid to the fact that the document, an article by a top govt. weapons scientist arguing against the Comprehensive Test Ban Treaty, would not withstand open and critical scrutiny.

Fager, Chuck. "You Have a Right To Know Less and Less." *In These Times*. Oct. 28-Nov. 3, 1981, p. 3. "Backdoor" amendments restricting the FOIA can be offered because the Act, as now written, allows for exemptions to be made from its jurisdiction by separate statutes.

Ullman, John. "Mum's Not the Word." *New York Times*. Dec. 2, 1981, p. A31. The arguments of excessive costs and damage to intelligence operations made by government agencies in seeking changes in FOIA are  
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## In The Literature

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allegedly supported by studies which the government refuses to release under FOIA.

U.S. House of Representatives, Committee on Government Operation, *Freedom of Information Act Oversight*. Hearings before the Government Information Subcommittee, July 14-16, 1981. 1022 pp. Testimony from a variety of press, media, historical and public interest groups, as well as present and former government officials, on the first set of oversight hearings held on FOIA since the 1974 amendments.

U.S. Senate, Select Committee on Intelligence, *Intelligence Reform Act of 1981*, Hearing, July 21, 1981. 90 pp. Concerns the impact of the FOIA on the CIA and other intelligence agencies, and contains testimony from representatives of the CIA, NSA, DIA, ACLU, and historical and publishing groups.

### HUMAN RIGHTS.

Brown, Cynthia Stokes, ed. *Alexander Meiklejohn: Teacher of Freedom*. Berkeley, CA: Meiklejohn Civil Liberties Institute, 1981. 281 pp., \$7.95. A collection of his educational, philosophical and legal writings, as well as a biographical study.

### NSA.

Brownell, George A. *The Origin and Development of the National Security Agency*. Laguna Hills, CA: Aegean Park Press, 1981. \$16.80. 98 pp. Reprint of the June 1952 report of a presidential commission appointed to study U.S. communications intelligence; subsequently, the NSA was established by executive order.

### SURVEILLANCE.

Duncan, John. "Warning: DPS May Want To Be Your 'Pen' Pal," *Texas Observer*. Oct. 9, 1981, pp. 6-7. The Texas Department of Public Safety may be attempting to circum-

vent the new state law against wiretapping with the use of pen registers.

Gelb, Leslie H. "Keeping An Eye on Russia," *New York Times Magazine*. Nov. 29, 1981, p. 31. A mysterious event in Sverdlovsk has raised doubts about arms-treaty surveillance.

Stein, Jeff. "Officer Ed Meese," *New Republic*. Oct. 7, 1981, pp. 21-25. As a top law enforcement officer during the Reagan governorship, now-presidential adviser Edwin Meese was a strong law and order proponent who was active in LEIU and other political intelligence operations.

U.S. Senate, Select Committee on Intelligence, *Implementation of the Foreign Intelligence Surveillance Act of 1978 (1980-1)*. Nov. 24, 1981, Senate Report 97-280 (Also U.S. House of Representatives, Permanent Select Committee on Intelligence, House Report 97-318). Both Committees report that 319 applications were made to the FISA Court and that 322 were granted (several applications made multiple requests). They generally discuss the proposed Reagan administration amendments, and recommend that the Act be permitted to remain in effect without amendment.

### TERRORISM.

Wolin, Sheldon S. "Separating Terrorism From Radicalism," *New York Times*. Nov. 3, 1981, p. A19. Terrorism is being construed as any crime committed by someone who public officials perceive as radical.

### NEWSLETTERS, JOURNALS, ETC.

*Civil Liberties Alert*, Nov. 1981. Available from the ACLU, 600 Pa. Ave., SE, Wash., DC 20003. Describes a major Congressional drive to increase secrecy and curb freedom of the press.

*Organizing Notes*, Nov./Dec. 1981. Available from the Campaign for Political Rights, 201 Mass. Ave., NE, Wash., DC 20002. The current issue covers the intelligence executive

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order, the FOIA revisions, the criminal code and tort claims, as well as a film and resource guide on political intelligence issues.

—Monica Andres

## Guest Point of View: Intelligent Intelligence, *continued from page 16*

not in a position to challenge the determination of higher-level officials to proceed.

The U.S. record of successes in covert political action is not impressive. One can name Iran and Guatemala where apparently successful actions took place many years ago.

From the perspective of history can even those actions be considered successes?

It is probably true that the size and power of the US would have bred a paranoia in many parts of the world about US involvement in the internal affairs of other nations, even if the

CIA did not exist. It is also true that the reputation for responsibility of the CIA has been badly distorted by revelations during the '60s of proposals found in files, many of which were never seriously considered. To many in the US and abroad, they were treated as fact. These revelations and the known propensity of American leaders to consider covert political action has added to the myth of the CIA around the world that has been a serious handicap to the general acceptance of the United States and its motives.

We are a nation which, with rare exceptions, has difficulty understanding other societies. To attempt to manipulate other societies requires the most sophisticated awareness of that society, its people, and the region around it. Few outsiders, including the KGB, possess that kind of insight. The US, in particular, with its frequent changes in intelligence

leadership, its problem of protecting agents, and its lack of a truly long-term approach, should be wary of such actions. Proposals hastily drawn under the pressures of short-term challenges to US policies are not likely to be successful.

This is where the select committees in the Senate and the House can, and do, play a role. From the committee members' own backgrounds as politicians, they can ask questions that many in the executive may have been unable or unwilling to ask.

There may be times when the US is justified in attempting, through covert means, to influence the situation in another country. These times should be rare. When such actions are considered, their success will be enhanced if the enthusiasm of the originator is matched by skeptical questioning by responsible members of the Congress. ■

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# Intelligent Intelligence

by David D. Newsom

With the Casey affair, the spotlight is once more on the Select Committee on Intelligence of the two houses of Congress.

The country should be grateful for their existence. Congress was correct last year to reduce the number of committees to which the intelligence agencies reported. The select committees, however, have a good record for responsible, secure surveillance of intelligence operations.

Their greatest value is in taking a hard look at covert action proposals. There is generally a large measure of agreement among members of the committees, policy makers, and intelligence officials on clandestine collection activities. That is less the case with operations that involve political action in another country.

Many Americans are fascinated with the idea of covert action. Among some in the Congress, in the public, in policy making positions and in the intelligence community there is an almost magical belief in America's ability to change, through covert means, circumstances not to its liking in other countries. "Unless the CIA" has been a common cry in several political campaigns.

This temptation to covert political action arises from several impulses. Many are broadly frustrated that the Soviet Union appears to get away successfully with manipulating

other societies. Without pausing to ask whether this is really true, such persons ask why the United States cannot do the same. Others are unable to accept that with our power and our influence we cannot change governments and policies contrary to our interests.

Intelligence officers and policymakers, already tempted, are sometimes swayed by the word of a persuasive foreign exile or dissident politician that, with some money and outside help, changes can be wrought. In fairness to the professional intelligence officers, some of the less feasible and more risky ideas have in the past arisen in areas of the executive outside the CIA.

Disciplined professional experts who, if they are aware of such plans, express their reservations in closed meetings are

*(continued on page 14)*

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*David D. Newsom, former US under secretary of state for political affairs, is director of administration and programs at the Institute for the Study of Diplomacy at Georgetown University.*

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***"Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad."***

**JAMES MADISON TO THOMAS JEFFERSON, MAY 13, 1798**

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